

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/505,146  
Applicant : SCHIEWECK et al.  
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Examiner : Deepak R. Rao  
Confirmation No. : 5721

Docket No. : 3165-106  
Customer No. : 6449

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**DECLARATION UNDER 37 C.F.R. §1.132**

I, Frank Schieweck, declare as follows:

1. I am the first named inventor of the above-identified application.
2. I make this declaration in order to make of record the results of certain tests carried out in accordance with the present claims.
3. The following two experiments were conducted by me or under my supervision and control.
4. Action against gray mold on pepper leaves caused by *Botrytis cinerea* (protective application).

A compound of the present invention and a compound of Glencke (USP 5,250,530) were compared for determination of anti-fungal activity with respect to gray mold on pepper leaves caused by *Botrytis cinerea*. The structures of the compared

compounds, as well as the procedures for application, are explained in the attached Test Report at Comparative Example 1. A synopsis is included below in paragraph number 5.

5. Pepper Seedlings of the "Neusiedler Ideal Elite" variety were sprayed to runoff with an aqueous suspension having a compound, A1, concentration of active ingredient as given in the attached table for Comparative Example 1, after 4 to 5 leaves had developed sufficiently. The suspension or emulsion was prepared from a stock solution with 10% active ingredient in a mixture consisting of 85% cyclohexanone and 5% emulsifier. On the following day, the treated plants were inoculated with a spore suspension of *Botrytis cinerea* containing  $1.7 \times 10^6$  spores/ml in a 2% aqueous Biomalz solution. The test plants were then placed in a climatic chamber at 22 to 24 °C and high humidity. After 5 days, the extent of fungus attack on the leaves could be assessed visually in %.

The claimed compound provided a fungus control of 70%, whereas the compound of Giencke provided a fungus control of only 50%.

6. Action against net blotch on barley caused by *Pyrenophora teres* (protective application).

A compound of the present invention and a compound of Giencke (USP 5,250,530) were compared for determination of anti-fungal activity with respect to net blotch on barley caused by *Pyrenophora teres*. The structures of the compared compounds, as well as the procedures for application, are explained in the attached Test Report at Comparative Example 2. A synopsis is included below in paragraph number 7.

7. Leaves of pot plants of barley seedlings were sprayed until dripping with an aqueous suspension, having a compound of the present invention, A1, concentration of

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active ingredient as given in the attached table for Comparative Example 2. After 24 hours, the test plants were inoculated with an aqueous suspension of the spores of *Pyrenophora teres*, the pathogen of the net blotch disease. The test plants were then placed in a greenhouse at temperatures between 20 and 24 °C and a relative atmospheric humidity of 95 to 100%. After 6 days, the extent of disease development was determined visually in % attack of the whole leaf area.

The claimed compound provided a fungus control of 50%, whereas the compound of Giencke provided a fungus control of only 10%.

8. As can be seen from the attached tables, application of the compounds of the present invention were shown to have increased the percentage control of leaf surface area attacked by each fungi by 40% and about 45%, respectively, when compared to the compound of Giencke.

9. All statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true. All statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.



Name

July, 3<sup>rd</sup> 2007

Date

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Schieweck et al.; U.S. Serial No. 10/505,146  
 Our Ref.: 53273/SSp  
 Your Ref.: 3165-106

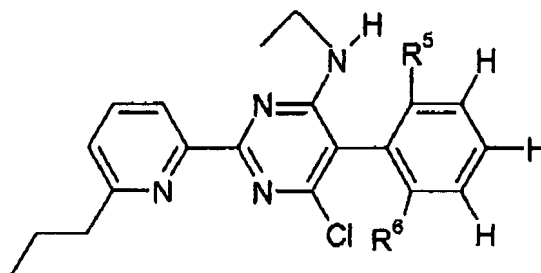


## Test Report

### Comparative Example 1

Action against gray mould on pepper leaves caused by *Botrytis cinerea* (protective application)

Pepper seedlings of the "Neusiedler Ideal Elite" variety were sprayed to runoff with an aqueous suspension having the below mentioned concentration of active ingredient after 4 to 5 leaves had developed sufficiently. The suspension or emulsion was prepared from a stock solution with 10% active ingredient in a mixture consisting of 85% cyclohexanon and 5% emulsifier. On the following day, the treated plants were inoculated with a spore suspension of *Botrytis cinerea* containing  $1.7 \times 10^6$  spores/ml in a 2 % aqueous Biomalz solution. The test plants were then placed in a climatic chamber at 22 to 24°C and high humidity. After 5 days the extent of fungus attack on the leaves could be assessed visually in %.



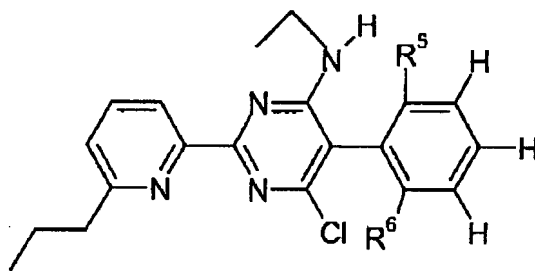
| compound  | document                      | R <sup>5</sup> | R <sup>6</sup> | attack in % of the leaves after application of aqueous a.i. preparation with 250 ppm a. i. |
|-----------|-------------------------------|----------------|----------------|--|
| A1        | according to the invention    | F              | Cl             | 30   |
| V1        | EP-A 407899<br>(US 5,250,530) | H              | H              | 50   |
| untreated |                               |                |                | 80   |

Schieweck et al.; U.S. Serial No. 10/505,146  
 Our Ref.: 53273/SSp  
 Your Ref.: 3165-106

### Comparative Example 2

Action against net blotch on barley caused by *Pyrenophora teres* (protective application)

Leaves of pot plants of barley seedlings cv. "Igri" were sprayed until dripping with an aqueous suspension having an active ingredient concentration as given below. 24 hours after the spray coating had dried on, the test plants were inoculated with an aqueous suspension of spores of *Pyrenophora* [syn. *Drechslera*] *teres*, the pathogen of the net blotch disease. Thereafter, the test plants were placed in a greenhouse at temperatures between 20 and 24 °C and a relative atmospheric humidity of 95 to 100 %. After 6 days, the extent of the disease development was determined visually in % attack of the whole leaf area.



| compound  | document                      | R <sup>5</sup> | R <sup>6</sup> | attack in % of the leaves after application of aqueous a.i. preparation with 63 ppm a. i. |
|-----------|-------------------------------|----------------|----------------|---|
| A1        | according to the invention    | F              | Cl             | 50  |
| V1        | EP-A 407899<br>(US 5,250,530) | H              | H              | 90  |
| untreated |                               |                |                | 90  |